The Judicial Branch 
& Your Rights

The judicial branch of government is made up of the court system. The highest court in the land is the U.S. Supreme Court. Article 3 of the Constitution established this Court; all other Federal courts were created by Congress. Courts decide arguments about the meaning of laws, how they are applied, and whether they break the rules of the Constitution. The judicial branch of the new government was different from the legislative and executive branches. In one very important way, the courts did not have the power to initiate action by themselves. Congress could pass laws, and the President could issue executive orders, but courts could not review these actions; just because they wanted to, they had to wait until a dispute (a “case or controversy”) broke out between the people who had something to gain or lose by the outcome.

The most common constitutional violations went unchallenged because the people whose rights were most often denied were exactly the members of society who were least aware of their rights and least able to afford a lawyer. They typically had no access to the courts. More than a century would pass before the U.S. Supreme Court even had the opportunity to protect individual rights. For its first 130 years, the most notable thing about the Bill of Rights was its almost total lack of implementation by the courts.

Reconstruction Amendments

Forbids slavery and “ involuntary servitude” (1865)
Forbids states from passing laws depriving any person of life, liberty, or property “ without due process of law” or of not giving to each person the equal protection of the law. (1868)
Forbids the U.S. or any state from preventing a person from voting because of “race, color, or previous condition of servitude.” (1870)

20th Century Amendments

Permits the income tax. (1913)
Provides for the election of Senators by the people instead of by state legislatures. (1913)
Forbids the manufacture, sale, or shipment of intoxicating liquors. (This is the Prohibition Amendment). (1913)
Gives women the right to vote. (1920)
The term of the President ends on January 20. If the President dies before the term begins, the Vice President becomes President. (1933)
Repeals the 18th Amendment; once more allowing for the making and sale of liquor. (1933)
Bars any President from serving more than two terms. When a Vice President succeeds a President (because of a death, resignation or impeachment) and has served more than two years of the President’s term, the Vice President shall not be allowed to run for more than one additional term. (1951)
Gives the District of Columbia three electoral votes for the election of President and Vice President. (1961)
Forbids the U.S. or any state to abridge or deny any citizen the right to vote for the President or Vice President or any state representative in Congress because of failure to pay any other tax. (1964)
Sets up a plan for the Vice President to take over the duties of the President when the latter is unable to perform them. (1967)
Permits voting by eighteen-year-olds. (1971)
Limits congressional pay raises. (1992)

Hammet Tubman, far left, with fired slaves. Though slavery was declared unconstitutional under the 13th Amendment, racial segregation was the norm until the Civil Rights Movement and court challenges in the mid-20th century.

By the beginning of the 20th century, racial segregation was legal and pervaded all aspects of American society. Sex discrimination was firmly institutionalized and workers were arrested for organizing labor unions. Legal immigrants were deported for their political views, and the police used physical coercion to get criminals suspected of confess.

In 1920, the American Civil Liberties Union, the National Association for the Advancement of Colored People (NAACP), labor unions and other organizations began to challenge constitutional violations in court on behalf of those who had been previously shut out. This was the beginning of what has come to be known as “public interest law.” Although they had few early victories, these organizations began to create a body of law that made First Amendment freedoms, privacy rights, and the principles of equality and fundamental fairness come alive. Enormous progress was made between 1954 and 1973, when many rights long dormant became enforceable.

SIGNIFICANT SUPREME COURT DECISIONS

RIGHTS MATTER

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Freedom of Speech
In 1969, the Supreme Court reversed a previous decision, and held in Brandenburg v. Ohio that even (or especially) unpopular speech is protected by the First Amendment, including speech that advocates the use of force and violence to bring about change. However, if the speech is likely to incite immediate criminal behavior, it is not protected.

Freedom of Speech
In 1965, the Supreme Court ruled in Cox v. Louisiana that the law used to arrest students who were demonstrating against segregated lunch counters was unconstitutional. “We affirm that our First Amendment constitutional command of free speech and assembly is fundamental and encompasses peaceful social protest.”

Exclusionary Rule
In 1961, in Mapp v. Ohio, the Court held that evidence illegally seized by local or state police could not be introduced in court. This is known as the “exclusionary rule.”

Searches and Warrants
In 1928, the Supreme Court had ruled that police could wiretap (eavesdrop on a phone) without a warrant. In 1967, that ruling was reversed in Katz v. United States, in which the Court declared that a warrant based on evidence of criminal behavior was needed for a wiretap, just as for a physical search.

Exclusionary Rule
The Court ruled in Miranda v. Arizona in 1966 that a person being held in police custody must be informed of his/her rights before being questioned. The court said that the person in custody must be told of their right to remain silent, and that anything said will be used against them in court. They must be clearly informed of their right to consult with an attorney, and to have that attorney present during interrogation, and that, if they are too poor to afford a lawyer, an attorney will be provided at no cost.

Due Process
In 1963, in Gideon v. Wainwright, the Supreme Court ruled that everyone has the right to a lawyer when being tried for a crime in a state court. In 1967, minors got due process protections when the court ruled in In re Gault that 15-year-old Gerald Gault had been wrongly treated when he was sentenced to state reform school for six years.

Cruel and Unusual Punishment
In 1972, in Furman v. Georgia, the Supreme Court held that capital punishment as it was being applied was not a credible deterrent to crime, and that it can constitute cruel and unusual punishment. But, in 1976, in a ruling in Gregg v. Georgia, the Court held that states could reintroduce capital punishment if they rework their death penalty statutes to end arbitrary and racially-biased sentencing. Today, only 14 states remain without the death penalty.

Equality and Privacy
The Court ruled in 1967 in Loving v. Virginia that a law banning interracial marriage was unconstitutional under the “equal protection” clause. In 1973, in Roe v. Wade, the Court ruled that the Fourteenth Amendment’s protection of privacy extends to a woman’s right to choose whether to terminate her pregnancy.

Support for Constitution Day
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